

**WAUKESHA COUNTY
MINUTES OF THE PARK AND PLANNING COMMISSION
THURSDAY, JUNE 30, 2005, 1:00 P.M.**

CALL TO ORDER

Walter Baade, Chairperson, called the meeting to order at 1:00 p.m.

Commission

Members Present:	Walter Baade	Pat Haukohl	Walter Kolb
	Mareth Kipp	Betty Willert	Gary Goodchild

Commission

Members Absent: Ellen Gennrich

Staff

Members Present: Richard L. Mace, Planning and Zoning Manager
Attorney Deborah Price, Waukesha County Corporation Counsel
Kathy Brady, Secretary Supervisor

Guests Present:	Brian Depies	Walter Baade, Jr.	Al Johnson	Dan Schwark
	Mary Schwark	Mary Orlowski	Chris Dix	Joe Neuman
	Sharon Lavin	Doreen Glaser	Terry Van Lare	Diane Heywood
	Steve Durni	Christopher Dix	Mike Schultz	

PUBLIC COMMENT

Chairperson Baade asked if anyone from the audience wished to address the Commission? There being no one, he moved to the next item on the agenda.

• **SVZ-1568 (Bielinski Homes, Inc.) City of Pewaukee, Section 18 (A-1 Agricultural District to the R-3 Residential District)**

Mr. Mace presented the "Staff Report and Recommendation" dated June 30, 2005, and made a part of these Minutes. He pointed out the location of the properties at N26 W27293 and W273 N2524 Prospect Avenue, in the City of Pewaukee on the aerial photograph.

Mr. Mace indicated the petitioner is proposing a 58-lot subdivision on approximately 35 acres. Mrs. Haukohl asked where the wetland area was located? Mr. Mace pointed out the wetland area on the aerial photograph. Mr. Depies, from Bielinski Homes, Inc., clarified the wetland area on the parcel to the east (Larsen property) had been tested by Mr. Parker from Graf, Anhalt, Schloemer & Associates (wetland delineation firm) and it was determined not to be a wetland. He indicated the wetland was based off of the Southeastern Wisconsin Regional Planning Commission's (SEWRPC's) general mapping system and although previous maps showed the area as wetlands, the area was tested and it was determined not to contain wetlands. He said there is another small wetland area on the Bielinski property. Mr. Mace noted that he had not seen Mr. Parker's study and SEWRPC's map should be corrected if necessary.

Mr. Mace explained the Planning and Zoning Division Staff expressed concerns with the planned street extensions for the area. The area resident's are against extending Shelly Lynn Drive to access the property. He suggested a street extension be planned for, on the southern portion of the Bielinski property to connect with Fieldhack Drive, located next to the Majeski property to the south. The Staff is also recommending that the request be referred back to the City of Pewaukee to consider a street extension to Fieldhack Drive. Mr. Goodchild asked if the development would tie in with the Carriy

Development to the east? Mr. Mace replied that although he had not seen the Development Plan for the Carrity property, he understands that a connection from Orchard Lane to the Bielinski property is proposed. Mrs. Kipp asked if the subdivision would contain sewer and water, to which Mr. Mace replied, "Yes". Mrs. Haukohl asked how wet is the wetland area? Mr. Mace replied that there were hydric soils on the north end of the property. Mr. Depies explained to the Commission some of the reasons how the layout of the development was created and why Fieldhack Drive was not considered. One proposed access to the property is from Orchard Lane through the Carrity Development connecting with the Bielinski property. Another option was to extend Shelly Lynn Drive, however, because of the neighbor's concerns regarding the new road becoming a shortcut from C.T.H. "G" to C.T.H. "SS" and the creation of additional traffic and safety concerns, the City Plan Commission agreed to eliminate the street extension from Shelly Lynn Drive. He indicated the property owner to the south (Majeski) was present at the public hearing and raised concerns regarding water drainage to his property, however, a possible road extension from Fieldhack Drive through his property to the Bielinski property was not discussed. There is an existing treeline and severe slopes within the area mentioned (approximately 70' difference). He suggested that since the original public hearing in April 2005, the soils issue has been addressed. However, the issue of the extension to Fieldhack Drive was not mentioned or addressed at the public hearing by the Planning and Zoning Division Staff. He suggested the rezoning should be approved and forwarded to the Land Use, Parks and Environment Committee and if they feel the issue of the road extension needs to be addressed they could send it back to the City at that time.

Mrs. Kipp asked what the existing densities of the surrounding properties were? Mr. Depies replied approximately 8,000 sq. ft. or less or one to three acres in size. Mr. Goodchild asked why Heather Lane to the east was not considered as a street extension? Mr. Depies replied, that the City may possibly purchase the property to the west for parkland in the future. Mrs. Haukohl expressed concerns regarding the protection of groundwater and whether the City of Pewaukee had issues with supplying water to 58 new homes. Mr. Depies indicated the City did not raise concerns regarding water supply. He added, that soil boring information will be submitted to the Staff and a Grading Plan has been completed and noted that none of the basements would be within 1.5' of the highest watertable. Mrs. Kipp expressed concerns that according to the Preliminary Plat there would be one access for 58 lots. Mr. Depies said there would be another access to C.T.H. "SS". Mrs. Kipp and Mrs. Willert said they felt uncomfortable recommending approval of the rezone without the outstanding issues being resolved.

After discussion, Mrs. Willert moved, seconded by Mrs. Haukohl and carried unanimously, for approval, in accordance with the "Staff Report and Recommendation" for the request to be referred back to the City of Pewaukee Plan Commission for reconsideration and the need to discuss the option of access from the development to the southeast.

SCHEDULED MATTER

• **1:15 p.m. SCU-1387A (Steve Durni) Town of Ottawa, Section 26**

Mr. Mace pointed out the location of the property at W358 S4705 Chickory Ct., abutting the Kettle Moraine State Forest in the Town of Ottawa on the aerial photograph, and stated the petitioner is requesting reconsideration of conditions.

Mr. Mace explained at the May 19, 2005 Commission meeting, the petitioner requested after-the-fact approval for earth-altering activities to construct a retaining wall, berm (existing), pool and deck, and associated landscaping on the subject property in accordance with the submitted Grading Plan. The Commission approved the Conditional Use request for earth-altering activities, subject to eleven (11) conditions. Condition No. 11 of that approval stated that,

“The petitioner shall submit a Planting Plan designed by a Landscape Architect to the Planning and Zoning Division Staff to be reviewed and approved by the County Landscape Architect Staff, restoring a minimum of 6,000 sq. ft. with woodland species indigenous to the area. The planting shall be completed by the end of the Fall 2005 planting season and remain healthy and established thereafter. The petitioner shall submit a Bond or Letter of Credit in the amount of the cost to restore 6,000 sq. ft. with indigenous woodland species to be used by the County in the event the planting is not completed by November 1, 2005, or in the event the vegetation is not healthy and alive by June 1, 2006 and needs to be replaced.”

At the June 2, 2005, Commission meeting, Kathy Moore, Senior Planner clarified Section 6.75(3)(A) of the Waukesha County Zoning Code regarding areas of disturbance in Primary Environmental Corridors. At the June 16, 2005, Commission meeting, the petitioner requested reconsideration of Condition No. 11. The motion to approve the petitioner’s request failed by a tie vote, however, later in the meeting the Commission decided to place the matter on the June 30, 2005 Park and Planning Commission meeting agenda for reconsideration. It was requested that Attorney Price from the Waukesha County Corporation Counsel’s office be present at the meeting.

Attorney Price (present at the meeting) submitted a “Memorandum/Legal Opinion” regarding the petitioner’s reconsideration. With respect to the 11 conditions placed on the grading Conditional Use approved by the Commission on May 19, 2005, she is suggesting that some of the conditions be modified or eliminated. According to the Environmental Corridor District, the petitioner is allowed, by right, 32,600 sq. ft. of open space. Although large trees were removed and grading occurred without a permit, the petitioner paid a citation, applied and paid double the fees for an after-the-fact Grading Permit. Her perception is that it is permitted by right under the Code and Mr. Durni is allowed to have the open space (32,600 sq. ft.) on his lot and he would also be entitled to clear an additional 8,000 sq. ft. She is requesting the Commission reconsider the conditions as follows:

Condition No. 6

“The introduction of plant material not indigenous to the existing environment of the Primary Environmental Corridor is prohibited. The plant material used to restore the site shall be indigenous to the area.”

Condition No. 6 should be struck from the permit. There is nothing in Section 6.7, the Environmental Corridor District of the Zoning Code, which could be a basis for a condition regarding this type of plant material. Additionally, for the reasons stated below under Condition No. 11, she does not believe there are any legal grounds supporting a requirement to restore the site.

Condition No. 7

“The total area of land disturbance in the Primary Environmental Corridor, including all buildings and their attachments, driveways, walkways, patios, pools, recreational amenities, retaining walls, septic systems, etc., shall not exceed 32,000 square feet.”

Condition No. 7 should be modified to change 32,000 square feet to 32,600 sq. ft. In the Environmental Corridor District of the Zoning Code, Section 6.75(3)(A) addresses area regulations and preservation of open space. For parcels lying entirely within an Environmental Corridor Zoning District, such as Mr. Durni, no open space regulation shall apply. However, the code indicates that all earth altering activities and vegetative removal shall be no more than 15% of 5 acres (32,600 square feet) in the Environmental Corridor. This provision would allow Mr. Durni to have earth altering activities, vegetative removal and

open space up to 32,600 square feet. She does not believe there is a legal basis in the code for restricting the petitioner to open space less than what he is permitted by right.

Condition No. 8

“The removal or destruction of any vegetative cover, i.e., trees, shrubs, grasses, etc., shall be prohibited, with the exception of the removal of dead, diseased, or dying vegetation at the discretion of the landowner or silvicultural thinning upon the recommendation of a forester or naturalist, and the approval of the Waukesha County Department of Parks and Land Use.”

Condition No. 8 should be modified to require “that future removal of any vegetative cover, i.e., trees, shrubs, grasses, etc., shall be prohibited beyond 32,600 square feet with the exception of the removal of dead, diseased, or dying vegetation at the discretion of the landowner or silvicultural thinning upon the recommendation of a forester or naturalist, and the approval of the Waukesha County Parks and Land Use Department.” Pursuant to the area of regulations in Section 6.75 of the Zoning Ordinance, the landowner is permitted to remove vegetation in the Environmental Corridor up to 32,600 square feet.

Condition No. 11

“The petitioner shall submit a Planting Plan designed by a Landscape Architect to the Planning and Zoning Division staff to be reviewed and approved by the County Landscape Architect staff, restoring a minimum of 6,000 square feet with woodland species indigenous to the area. The planting shall be completed by the end of the Fall 2005 planting season and remain healthy and established thereafter. The petitioner shall submit a bond or letter of credit in the amount of the cost to restore 6,000 square feet with indigenous woodland species to be used by the county in the event the planting is not completed by November 1, 2005, or in the event the vegetation is not healthy and alive by June 1, 2006 and needs to be replaced.”

Condition No. 11 should be removed entirely from the permit. The permit addresses earth-altering activities to construct a retaining wall, berm, pool and deck. Any conditions shall be associated with those activities and shall have a basis in the Zoning Ordinance. Review of the material and plans submitted by Mr. Durni, concluded that the total disturbed area is 24,675 square feet. Under Section 6.75 of the Zoning Ordinance, the petitioner is entitled and permitted by right to have open space up to 32,600 square feet. He is permitted by right to create open space of an additional 7,925 sq. ft. before he reaches the 32,600 square ft. limit of the Code. She does not believe there is any legal basis in the code requiring a restoration of 6,000 square feet.

In conclusion, the petitioner has faced the enforcement action, done what has been asked of him for grading without a permit and he was entitled by right to do what he did.

After discussion, Mr. Kolb moved, seconded by Mr. Goodchild and carried unanimously, for approval, as conditioned, in accordance with the “Memorandum/Legal Opinion from Attorney Price, dated June 30, 2005”. In addition, the Planning and Zoning Division Staff will incorporate and modify the conditions set forth in the Memorandum/Legal Opinion from Attorney Price. The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances

- **1:30 p.m. CS-962 (Gayle Schmitt) Town of Vernon, Section 14**

The matter was withdrawn from the agenda.

• **SZT-1520A (North Lake Yacht Club) Town of Merton, Section 16 (C-1 Conservancy District to the R-3 Residential District)**

Mr. Mace presented the “Staff Report and Recommendation” dated June 30, 2005, and made a part of these Minutes. He pointed out the location of the property, on North Woods Drive in the Town of Merton on the aerial photograph.

Mr. Mace indicated the petitioner is requesting to rezone the property and complete the circle driveway, add parking spaces and to construct a 4,200 sq. ft. (reduced from the requested 5,000 sq. ft.) yacht club building for the storage and club purposes. Mrs. Kipp asked why the property was being rezoned to the R-3 Residential District? Mr. Mace replied the Ordinance provides for it and noted there will also be an associated Conditional Use for a private club. At the public hearings there seemed to be an equal amount of persons both in favor and opposed to the rezoning. Concerns raised included parking on North Woods Road (for events) and blocking traffic. Mr. Baade agreed with the above concern and added that North Woods Road is basically a cul-de-sac. There were also concerns that the area was a conservancy/wetland, a holding tank would be used and that the club had violated the previous Conditional Use Permit for the property.

The Town, County and petitioners met regarding the need for additional inventories and wetland survey's on the site. A wetland investigation was completed on the property by Alice Thompson of Thompson Associates, which identified the extent of the wetland on the site. None of the area of rezoning has extended into the wetlands. The area was previously (prior to 1950) filled and the wetland inventories indicate that on numerous occasions they could not dig deeper because rocks, concrete and fill were found. The Department of Natural Resources and the Army Corp of Engineers has signed off on the wetland inventory. Mrs. Haukohl asked what is the setback for the proposed building? Mr. Mace replied, “75 ft.”, however, the petitioners have applied for a variance for the setback. A portion of the site will be filled, enough to allow the 4,200 sq. ft. building, however, no fill will be allowed above the 100-Year Floodplain for the proposed driveway. The building floor and holding tank will be located two ft. above the 100-Year Floodplain.

Mr. Dix, representing the North Lake Yacht Club, indicated that the original request for the building was 5,000 sq. ft. The Town required the size of the building to be reduced to 4,200 sq. ft. Mr. Baade asked how many members does the club have? Mr. Dix replied, approximately 135 families. He noted the club has an active sailing program. Mrs. Kipp asked if the club planned in the future to have a restaurant or snack shop on the property? Mr. Dix responded, there is a kitchenette area for keeping food warm, and the only sale of food under the Conditional Use Permit is in conjunction with the operation of a regatta or club merchandise sales and noted it is not a public facility. Mr. Mace pointed out that the above issues would be addressed in the Conditional Use. Mr. Dix added that the club has an arrangement with the former M & I Bank (currently Codeworks) to park club member vehicles and trailers on their property and the club members would be shuttled to the site. Mr. Mace said the building would be used to store the eight to nine ft. prams, associated with the sailing school. Mrs. Kipp asked, when the parking issue would be addressed, to which Mr. Mace replied during the Conditional Use process.

Mr. Neuman, neighboring property owner, submitted a petition signed by 22 residents of Northwoods Drive and Northwoods Lane opposing the rezoning of the property. Also submitted were comments from Mr. Schwartzmeier, Waukesha County Naturalist (dated 1985) stating that the site provides desirable wildlife, vegetative and hydrologic natural shoreland function, a violation complaint document (dated July 10, 1983) for floodplain filling and a Department of Natural Resources review letter (dated January 24, 2005). He noted the property is located in the Environmental Corridor and would like the

County to request a wetland delineation from SEWRPC. Mr. Kolb asked how the rezone proposal directly affects this particular neighbor? Mr. Neuman replied, "Noise, traffic, the unauthorized use of the property by teenagers and wetlands being filled and destroyed." Mrs. Kipp asked, how visible is the proposed building from the road? Mr. Mace responded that woods would surround the building. Other neighbors spoke in opposition of the rezoning expressing concerns regarding noise, traffic and illegal filling on the property. They would also like to have the illegal fill removed and a review of the wetland delineation.

After discussion, Mrs. Haukohl moved, seconded by Mrs. Kipp and carried by a vote of 5 to 1 (Chairperson Baade voted against), for approval, as conditioned, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.

- **SVZ-1574 (Thomson Development Corporation) City of Waukesha, Section 6 (A-1 Agricultural, A-2 Rural Home and C-1 Conservancy Districts to the R-3 Residential and C-1 Conservancy Districts)**

Mr. Mace presented the "Staff Report and Recommendation" dated June 30, 2005, and made a part of these Minutes. He pointed out the location of the properties on the south side of Madison Street, west of Merrill Hills Road and adjacent to the Retzer Nature Center property in the City of Waukesha on the aerial photograph.

Mr. Mace said the petitioner is proposing a residential subdivision containing approximately 184 lots, an average of 15,000 sq. ft. in size. Mr. Schultz, from the Thomson Corporation, said that the development is consistent with surrounding developments. Mr. Mace explained the property has been considered for purchase by the County for a number of years and noted as such on the Land Use Plan. There were discussions with the former owners regarding the sale of the property, however, an agreement was never reached. The Thomson Corporation purchased the property and an agreement was reached regarding the entire property not being necessary for the operation of Retzer Nature Center. All of the PEC lands, a buffer zone and trail corridors were going to be dedicated to Waukesha County. Mr. Goodchild asked how many acres were being donated to the County? Mr. Mace replied approximately 75.3 acres. Mrs. Haukohl expressed concerns regarding groundwater issues with such a large development.

After discussion, Mrs. Kipp moved, seconded by Mrs. Willert and carried by a vote of 5 to 1 (Mrs. Haukohl voted against), for approval, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.

- **SCU-1048C (Cira/Ward, LLC) Town of Oconomowoc, Sections 35 and 36**

Mr. Mace presented the "Staff Report and Recommendation" dated June 30, 2005, and made a part of these Minutes. He pointed out the location of the property at N68 W37850 C.T.H. "K" in the Town of Oconomowoc on the aerial photograph and stated the petitioner is requesting Conditional Use approval for a boat slip rental operation.

Mr. Mace explained that when a Comprehensive Zoning change rezoned the restaurant property to the B-2 Local Business District, the restaurant became a permitted use by right and no longer required a Conditional Use Permit. The marina operation is not a permitted use in any zoning district, therefore, a Conditional Use Permit is still required. The petitioner will be allowed to moor fourteen (14) boats. Mrs. Willert asked what condition the piers are in because the "Staff Report and Recommendation" indicates they are in disrepair? Mr. Mace replied that the Town of Oconomowoc Planner inspected the

pier on June 29, 2005, and indicated the piers have been repaired. Mrs. Willert asked who has verified that there are 43 parking spaces on the Jollmon property? Mr. Mace replied, the Site Plan on Exhibit "A" indicates the location of the parking spaces. Mrs. Willert felt the area is a poor location for a marina.

After discussion, Mr. Goodchild moved, seconded by Mr. Kolb and carried by a vote of 5 to 1 (Mrs. Willert voted against), for approval, as conditioned, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.

• **PO-03-OCOT-15 (Oconomowoc Landscape Supply Center) Town of Oconomowoc, Section 21**
Mr. Mace presented the "Staff Memorandum" dated June 30, 2005, and made a part of these Minutes. He pointed out the location of the property at the northeast corner of C.T.H. "K" and S.T.H. 67 in the Town of Oconomowoc on the aerial photograph and stated the petitioner is requesting to amend Condition No. 3 regarding the hours of operation.

Mr. Mace indicated the Planning and Zoning Division Staff felt the hours of the operation should be limited on Sunday's and holidays. Mr. Van Lare said some of the hours listed in the "Staff Memorandum" contradict each other. Specifically, he pointed out the second bullet on Page 3 indicate offsite deliveries shall be limited to Monday and Friday from 7:00 a.m. to 5:00 p.m., however, it should be from 7:00 a.m. to 6:00 p.m. He spoke with the Town of Oconomowoc Planner who reviewed the tape from the Town Plan Commission meeting and said the condition should read from 7:00 a.m. to 6:00 p.m. Mrs. Willert suggested the hours of operation be clarified with the Town of Oconomowoc Planner and the conditions be adjusted accordingly. The Commission agreed.

After discussion, Mrs. Haukohl moved, seconded by Mrs. Willert and carried unanimously, for approval, as conditioned, in accordance with the "Staff Memorandum". In addition, the Planning and Zoning Division Staff will clarify with the Town of Oconomowoc Planner, the hours of operation set forth in the conditions and adjust as necessary. The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.

ADJOURNMENT

With no further business to come before the Commission, Mrs. Kipp moved, seconded by Mrs. Willert to adjourn at 3:50 p.m.

Respectfully submitted,

Ellen Gennrich
Secretary

EG:kb